

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION  
CASE NO. 1:17-CV-398

TEOFILO C. MATIAS        )  
                              )  
                              )  
v.                           )  
                              )  
                              )  
ELON UNIVERSITY        )

COMPLAINT  
JURY TRIAL DEMANDED

Plaintiff, complaining of the Defendant, alleges and says:

**I.        INRODUCTION AND JURISDICTION**

1.        This is an action seeking damages as well as legal, equitable and declaratory relief under the Civil Rights Act of 1866, 42 U.S.C. §1981 (“§1981”), Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e, et seq., and the common law and public policy of the State of North Carolina. Plaintiff’s claims arise from Defendant’s violations of these statutes and common law, including discrimination based on his race, and wrongful discharge of his employment.

2.        Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1434, this suit being a proceeding seeking to enforce rights and remedies secured in §1981 and Title VII. Jurisdiction is also conferred upon this Court by 528 U.S.C. §1331.

3.        Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§2201 and 2202, this being an action for declaratory judgment, declaring illegal the acts of Defendant complained of herein, violating rights secured to the Plaintiff by §1981 and Title VII.

**II. PARTIES**

4.        Plaintiff Teofilo C. Matias is a naturalized citizen and resident of Alamance County, North Carolina.

5. Plaintiff Elon University is a private non-profit institution of higher learning located in Alamance County, North Carolina.

### **III. FACTS**

6. Plaintiff was initially employed by Defendant in August, 1999 as a Custodian. He was promoted to Sanitation Worker and held that position from 2000 to 2005. He was promoted to Utilities Supply Workman in 2005 and held that position until he was terminated. In this position, he was responsible for the delivery of custodian supplies, paper products and maintaining the environmental services floor care equipment. He had other duties as well, which included doing inspections on all of the fire extinguishers throughout the campus and assisting the Central Service Clerk on the loading dock with receiving and issuing Elon University property. He was responsible for setting up all 55 gallon drums that had different chemicals to dispense, delivery and to make sure the chemicals had the proper labels. In addition, he performed a number of other duties as requested and needed. He performed his job in a satisfactory manner and was never admonished for poor work performance.

7. Plaintiff was interested in receiving a promotion in 2014 when the position of Supervisor would become available. In October, 2014, he discussed his interest in the position with Wayne Brown, his Supervisor, who was going to retire in about 90 days. Wayne Brown told him that he was an excellent employee, got along with others very well and that there were no complaints about him.

8. Mr. Brown told him at that time that David Warden was the decision maker and that he had already made the decision to hire Mark Pool to be the Supervisor of the Support Services. Mark Pool was a younger white male who had less experience than Plaintiff and no knowledge of the job. Brown trained Pool for 2 weeks and then delegated all of the responsibility

for training pool to the Plaintiff. In January, 2015, Mark Pool started officially as the Supervisor. However, Plaintiff had to start training him in December, 2014.

9. Plaintiff had been the Assistant Supervisor, reporting to Wayne Brown, for ten years at that time and on occasions had served as the acting Supervisor because Brown was on leave or out sick. He served as the Interim Supervisor for six months. He also served as Supervisor when the University had home football games.

10. When Plaintiff applied for the position, David Warden told him "you don't know anything but how to make tacos." On occasion during his employment, when Plaintiff asked for a One-Dollar pay raise, Plaintiff was told he should stop begging for money and that if he didn't drive a Volvo he wouldn't need money. There were employees with less seniority and responsibilities who made more money than Plaintiff. None of the persons known to Plaintiff who made more money than he did were Latinos. Plaintiff was the only Latino in his department.

11. Plaintiff's department gets one week off for the Christmas break. In 2014, that break period was December 18 through 28, 2014. Plaintiff over the years had provided gifts to three women who worked in his department. These gifts were purchased by his wife with these three women in mind. Plaintiff was able to deliver two of the gifts, but one employee had already left the campus for the holiday before he could give her the gift. The gift was on the golf cart that he used to transport supplies. A female employee, Kim, saw the gift and took it without the Plaintiff's permission. The gift was later returned to his office.

12. After the Christmas holiday, Plaintiff returned to work and worked without incident. On February 2, 2016, he arrived at work at his regular time. David Worden, the Director of Environmental Service, summoned him to his office and advised him that he was suspended, but that Warden did not know why. He was told to turn in his keys, his cell phone and that he was

not allowed to come on campus. He was told that he could contact the Human Resources Department. Plaintiff left Warden's office and went to the Human Resources Department where he was advised by Carla Morris Ugboro, Associate Director of Human Resources for Employee Relations, that he was being suspended because he was under investigation. He was then asked if he had given a bracelet to an employee. Plaintiff responded that he gave the bracelet because he did not want to tell HR that the bracelet was stolen. He advised her that his wife had purchased gifts for employees and that Kim snatched the bracelet from the Cushman.

13. The University completed its investigation and advised the Plaintiff that he would be terminated immediately, that he would be paid for his vacation, and that his daughter, who was enrolled in the school on an employee tuition waiver, could stay at the school until May.

14. Plaintiff appealed his decision to John Lowes. Lowes upheld the decision, telling the Plaintiff that if you continue to give a person a gift and they don't want it, that that constituted sexual harassment. Plaintiff, who had been employed with the Defendant for over 17 years and who had received exemplary evaluations, asked how the University could take the word of a person who had only been there six months over his and not do a thorough investigation.

15. Plaintiff was aware that other employees had actually engaged in sexual harassment and had carried on sexual affairs in the work place. This information was known by Management. However, those individuals who were of a different race than Plaintiff were not disciplined and remained employed after Plaintiff was terminated.

#### **IV. CLAIMS FOR RELIEF**

##### **First Claim for Relief: Race Discrimination - Promotion**

16. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

17. Plaintiff maintains that he was denied the promotion to Supervisor in October, 2014 in violation of §1981. A lessor qualified white male who Plaintiff had to train was hired for the position. The decision-maker on the promotion had previously used inappropriate language towards Plaintiff regarding his national origin.

18. Defendant also discriminated against Plaintiff in that he was not provided pay raises comparable to his non-Latino co-workers.

19. Defendant's actions and omissions in violation of §1981 were undertaken willfully, wantonly and with reckless disregard for the Plaintiff's rights, entitling him to compensatory and punitive damages.

#### **Second Claim for Relief: Race Discrimination - Termination**

20. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

21. Plaintiff was terminated from his employment based upon fabricated information which, if Defendant had done a thorough investigation, would have known that the allegations against him were unfounded.

22. Defendant's actions and omissions were in violation of Title VII and §1981 and were taken willfully, wantonly and with reckless disregard for Plaintiff's rights, entitling him to compensatory and punitive damages.

#### **V. ADMINISTRATIVE REMEDIES**

23. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

24. Plaintiff filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), Charge No. 435-2016-00520, on May 13, 2016.

25. The EEOC issued a right to sue notice, dated February 2, 2017. Plaintiff is filing this action within 90 days of receipt of the right to sue notice and has complied with all jurisdictional requirements of Title VII and exhausted all administrative pre-requisites prior to instituting this proceeding.

## **VI. DAMAGES**

26. As a result of the discrimination and hostility claimed herein, Plaintiff has suffered a loss of earnings, loss of benefits and mental anguish and distress. Plaintiff is entitled to make whole relief under Title VII, as well as compensatory damages under both Title VII and §1981.

## **VII. JURY TRIAL DEMAND**

27. Plaintiff hereby demands a trial by jury.

## **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the discrimination suffered be remedied in full and that the Court, after a jury trial:

- a. Declare the actions complained of herein to be illegal;
- b. Issue an injunction enjoining the Defendant, its agents, employees, successors, attorneys and those acting in concert or participation with the Defendant and at its direction from engaging in the unlawful practices set forth herein and any other employment practice shown to be in violation of Title VII and §1981;
- c. Award Plaintiff compensatory damages, including damages for pain and suffering and infliction of emotional distress;
- d. Award Plaintiff his costs and expenses in this action, including reasonable attorney's fees, costs and other litigation expenses; and

f. Grant such other and further relief as may be just and necessary to afford complete relief to Plaintiff.

This 2<sup>nd</sup> day of May, 2017.

/s/ Geraldine Sumter

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